IN THE

Supreme Court of the United States

OCTOBER TERM 1943

NO. 1046

CELIA STRICKLAND ET AL.
Petitioners

vs.

HUMBLE OIL & REFINING COMPANY ET AL.
Respondents

AND

JASPER POOL ET AL.
Petitioners

vs.

HUMBLE OIL & REFINING COMPANY ET AL.
Respondents

PETITION FOR REHEARING

Come now Celia Strickland and the others named as Plaintiffs in the above entitled cause and present this, their petition for rehearing and pray that the Court reconsider its action in denying the petition of Celia Strickland, et al as Petitioners Vs. Humble Oil & Refining Company Et Al. and Jasper Pool Et Al, Petitioners Vs. Humble Oil & Refining Company, Et Al., for the writ of Certiorari.

By order of the Court as passed in said matter, of date, October 9, 1944 and in support thereof, respectfully show:

PART ONE - PRELUDE

In presenting this application for rehearing, it is rather difficult to forecast the theory upon which the petition for certiorari in the instant case was denied.

The Court, having failed to write an opinion, and not being required so to do, it is only possible for counsel to suggest to the Court some of the pertinent facts which the court evidently overlooked and also suggest the possibility of its having overlooked what we most earnestly contend - Controlling decisions and statutes as applicable.

The only issue before the Court - for review, upon the errors as assigned, is:

WAS THE WILSON STRICKLAND, THE SON of JACOB and PRISCILLA STRICKLAND OF FRANKLIN COUNTY, GEORGIA, one and the SAME PERSON as the WILSON STRICKLAND TO WHOM a ONE-THIRD of a LEAGUE of LAND WAS AWARDED BY THE BOARD OF LAND COMMISSIONERS OF HARRISBURG in the THEN REPUBLIC OF TEXAS ON THE 16th DAY OF APRIL, 1838.

PART TWO:

Specific reference to parts of the record to which the Court's attention is called:

Record Page (170 - 171)

Wherein it is shown affirmatively

That a person bearing the name of Wilson Strickland was in Texas: Prior to 1838, and a survey of a

one-third league of land was made for him and in his name,

Record 215:

The quantity of land to which this Wilson Strickland was entitled was represented by a certificate issued by the Board of Land Commissioners of Harrisburg County in the then Republic of Texas.

Record 404.

This Wilson Strickland signed his name by His X mark.

The last record evidence of this Wilson Strickland as being in Texas. was on April 16, 1838. (Record 404) at which time he made a contract with a person by the name of Allen Vince.

This Wilson Strickland was affirmatively beyond the limits of the State of Texas on August 18, 1847, and had been absent for some time prior thereto. (Record 402 - 403 and 404.)

A one-third of a league of Land in Harrisburg County, Texas, was patented in the name of this Wilson Strickland, his heirs and assigns on July 2, 1847 and was sent to Robert Campbell on July 27, 1847. (Record 399.

This was the same Robert Campbell who filed suit for Vince against this Wilson Strickland (the patentee) and swore that this Wilson Strickland was not within the limits of Texas on August 18, 1847 and had been so absent from Texas and beyond the reach of personal service for some time prior thereto. (Record

402 - 403 and 404) and this oath was made just three weeks after the letters patent were sent to Robert Campbell. (Record 423).

At the time at which Robert Campbell first wrote concerning the letters patent as the attorney for Vince on Sept. 29, 1846 he stated that Allen Vince was in Alabama and that before his departure he could not procure from him the necessary information.

(Record 392) This was about one year before the letters were finally sent to Campbell. (Record 399).

In this connection, we call the Court's especial attention:

To stipulation of counsel: (Record 550).

"That administration on the estate of Allen Vince, deceased, was taken on application of Robert Campbell who was appointed administrator in 1850. That during the administration there was no disposition of the property as patented to Wilson Strickland and that in 1860, the estate was closed and all the property of Vince was turned over to Susan Pratt and that there was no conveyance of the property of Wilson Strickland out of Pratt.

That in 1860 J. R. Campbell conveyed the property in controversy to a man named Phillips and that there was no deed out of Phillips. (Record 550).

A fair inference that at the time Campbell entered the suit against Wilson Strickland in 1847, a steal was contemplated - certain it is under the undisputed facts, the presumption in law would arise that Wilson Strickland from April 16, 1838 to August 1847 was not in

Texas and had not been heard from and that a legal presumption of law arose that this Wilson Strickland died, in the interim and was dead at the date at which the suit in 1847 was filed, and at the time the letters patent were issued in the name of Wilson Strickland.

In 1937 Celia Strickland and other original parties plaintiffs filed their suit against the Humble Oil & Refining Company and other defendants as named to recover a portion of the lands as conveyed to the Wilson Strickland under the letters patent as issued, as hereinbefore shown.

These plaintiffs contend that they were the heirs at law of legatees under the Will of a certain Wilson Strickland who was the son of Jacob and Priscilla Strickland and that Wilson Strickland in whose name the letters patent to the lands in Texas was issued, was one and the same person, as appellants' Wilson Strickland.

This Wilson Strickland was the son of Jacob and Priscilla Strickland, of Franklin County, Georgia. (Record 294 - 395).

This Wilson Strickland was born January 14, 1783. (Record 293).

This Wilson Strickland during a portion of his life lived in the State of Tennessee. (Record 333).

This Wilson Strickland receipted his father's estate in July 1828 for $307.00. (Record 368).

This Wilson Strickland, by family tradition, went to Texas.

(Record 187 - 198 - 248 - 275 - 276 and 283).

This Wilson Strickland, by family tradition, fought in the army of the Republic of Texas. (R - 374).

A person bearing the name of Wilson Strickland appeared in Texas in 1829 just a few months after the date at which Wilson Strickland the son of Jacob and Priscilla Strickland receipted his father's estate for money in July 1828.

This Wilson Strickland fought in the army of the Republic of Texas in a Company of Tennesseeans. (Record 303 - 1.)

This Wilson Strickland signed his name by his X mark.

This Wilson Strickland was the person to whom a certificate was issued by the Land Commissioners of Harrisburg County, Texas, to the effect that he was entitled to a one-third of a League of land, being the lands now involved in the case at bar. This Certificate was issued 16th. day of March 1838.

This Wilson Strickland was never by the record or by any other proof, ever to have been heard of, or to his having ever been in Texas AFTER April 16, 1838 at which time he made the contract with Vince as shown by (Record 402 - 404).

Wilson Strickland, the son of Jacob and Priscilla Strickland, of Franklin County, Georgia, died in the State of Arkansas, an adjoining state to Texas, on Nov. 9, 1841, which was just three years after the last appearance in Texas of the Wilson Strickland for whom the survey of the lands in dispute was made and so far as the record in this case discloses, the Wilson Strickland

to whom the lands in controversy was awarded, was never heard of after April 16, 1838.

Clearly, under this undisputed record evidence, the only deductable inference, as a matter of law and as a matter of conscience, leads to the absolute conviction that the Wilson Strickland who was the son of Jacob and Priscilla Strickland of Franklin County, Georgia - and the Wilson Strickland to whom the lands in controversy were awarded was one and the same person.

We confidently contend that the court in reaching the conclusion that the petition for certiorari should be denied, overlooked the facts as herein specifically set forth.

ARGUMENT AND CITATION OF AUTHORITIES

We contend that the United Circuit Court of Appeals, in the decision under review, erred in holding that:

"Identity of name, when proven, did not shift the burden of evidence and that upon a prima facie case being proven that the burden was not shifted to the opposite party. (Record 568).

Exceptions were taken to the charge of the court upon the trial of this case in the U. S. District Court for the Southern District of Texas, plaintiffs contending in the exceptions to the charge of the Court, as fully set out, on pages 49 et seq. of the record:

1.

That the trial judge placed undue prominence in giving undue emphasis to the burden of proof - in that

the court gave undue emphasis as to what was the burden to be carried by plaintiffs and intervenors and gave the load greater weight than was authorized by unusual repetition and did not give the corresponding duties devolving upon defendants, as to the shifting of the burden. (Record 49).

Upon considering this assignment of error, the United Circuit Court of Appeals for the Fifth Circuit, in affirming the judgment of the lower court, says in the first head note of the decision as rendered in this case and as reported in:

140th Federal Reports, 2nd Series, Page 83 et seq. in considering this exception, says:

"Identity of name is some proof of identity of person, but the weight and effect of such proof varies with the circumstances."

On page 85 of this Volume, Justice Sibley, in holding that the burden did not shift, gives as his reason that there was evidence of the existence of several Wilson Stricklands in life about the critical time and that identity of name does not prove the patentee to have appellants' Wilson Strickland any more than each of the others.

Error is assigned upon the ruling as made.

The judgment of the U. S. Circuit Court as rendered, is in conflict with established law, not only by the decisions of last resort in the Texas courts, but likewise in conflict with a uniformity of decisions of other United States Circuit Courts as well as the Supreme Court of the United States.

We submit that the error complained of, related to the status of the parties at the conclusion of plaintiffs'

testimony. If a prima facie case had been made, the burden resting upon plaintiffs had been carried.

Upon so being carried, the status at this juncture as related, changed, and the case upon going forward cast the burden of evidence upon the defendants to PROVE the NEGATIVE.

The Justice of the Fifth U. S. Circuit Court of Appeals, evidently lost sight of the real question involved, to-wit: Were the plaintiffs entitled to have the Court charge the jury as contended by plaintiffs?

"That if the plaintiffs had made out a prima facie case and had established that the Wilson Strickland under whom THEY claimed bore that same name of the Wilson Strickland, for whom the survey was made in 1838, and that the Wilson Strickland, (the son of Jacob and Priscilla Strickland) lived at the critical time and was by circumstances shown to have been in Texas, that then a prima facie case would have been made out and the burden of evidence would at this point, shift, and the defendants would be required to show by a preponderance of evidence that the Wilson Strickland, (the son of Jacob and Priscilla was NOT the Wilson Strickland for whom the survey was made.

The reasons assigned by the Jurist of the Fifth Circuit were related to the weight of the evidence submitted as a whole - and his deductions were not germane.

We contend that the plaintiffs were entitled under every rule of the game to meet the defendants upon a parity as related to respective burdens and most earnestly contend that under the rulings as made and as excepted to, they were denied a substantial right.

In this contention, we are amply supported, not only by the courts of Texas, the forum in which the case was tried, but by uniformity of decisions of other U. S. Circuit Courts of Appeals, including decisions from the bench of the United State Supreme Court.

TEXAS CASES HOLDING THAT:

"Identity of name is prima facie evidence identifying one and the same person."

Bowlin Vs. Freeland
289 S. W. - 721

McDoel Vs. Jourdan Et Al.
Civil Court Of Appeals - Texas.
151 S. W. - 1178 - (4th headnote)
Pyle Vs. Davison - 116th S. W. - 823

Decisions of other U. S. Circuit Court of Appeals holding to the same effect:

Mareiniss Vs. Sheran
31 Fed. (2nd. 976)
2nd Circuit

Miller & Son Vs. Petrocelli
236 Federal Report - 846
From the Ninth Circuit:

Faust Vs. U. S.
163 U. S. 452.

This last case being decided on appeal from District Court from the Northern District of Texas.

Counsel for defendants in their main Reply Brief on page 8 contend that these cases are not applicable because there was no other evidence, nor any suspicious circumstances appearing.

This contention is not germane to the exact point which was before the Court.

The question before the court on this assignment was - Did the burden shift?

The cases herein cited hold that identity of name without attendant circumstances support the presumption and make a prima facie case and shifts the burden.

Justice Sibley, while practically admitting that identity of name is sufficient - yet he says on page 85 - 140 Fed. 2nd)

"Other identification is necessary and the burden of showing it is not shifted from the plaintiffs."

We fear that the jurst in making this deduction, is rather confused - and fails to see the differential existing:

The real rule being:

Where there is only a similarity in name other identification is necessary - but where the names are identical - as in the case at bar, the prima facie case is made without other identification. The Chamblee case, as cited by Justice Sibley, falls under the rule relating to cases where there was only a similarity in names, and the Texas Court makes the distinction, holding that when the name is identical, the presumption exists and where there is a similarity in name, other proof is required, but be this as it may, other and convincing circumstances were proven in the case now under consideration.

Plaintiffs' Wilson Strickland, in addition to having the identical given and Surname - and the identical

method of signature as that of the patentee, it was proven:

That he receipted his father's estate for money in 1828 in Georgia just a few months before the Wilson Strickland appeared in Texas in 1829. Record 363). That he had prior to that time been a resident of Tennessee. (Record 333).

That he went to Texas (Record 187 - 197 - 283). That he fought in the Army of the Republic of Texas. That he was not shown to have been in Georgia in 1829 (Record 292).

The lands in dispute were surveyed for this Wilson Strickland in 1838. THIS Wilson Strickland was not shown to have been in Texas after 1838 and there was no evidence that he had ever been heard of after that date.

Appellants' Wilson Strickland died in Arkansas in 1841 and we contend that in his death THE Wilson Strickland for whom the survey was made was fully accounted for and that under the proven circumstances, in addition to identity of name and signature that a perfectly good and dependable prima facie case was made in favor of appellants, and we contend that the U. S. Circuit Court of Appeals in holding to the contrary, was reversible error.

2nd.

We invite the Court's especial attention to the evidence of a Mrs. A. C. Barnes, a witness offered by the defendants.

The evidence of this witness is set out on pages 495 to 511 of the record.

The evidence as offered was excepted to on the ground that it was hearsay and self serving, as shown by Exception for appellants' assignments of error, Number 16 and 18 inclusive (Record 109 to 114).

A fair sample of this evidence is set forth on pages 497 and 498 of the record where this witness testifies:

"That her father was a very small boy when he came to Texas - that her uncle got somebody to write a letter back home to ask my father or some of the other boys to come out here and live with him. My grandfather thought my father was too young to leave home, but there was a carravan of eastern North Carolina people coming through there and they said if they would let him come, they would see that he got to his uncle.

A careful review of this evidence will show that it is a product of an imaginary mind.

The testimony of this witness consisted entirely of narrative statements alleged to have been made to her by her father, witness saying that she did not talk to anyone but her father and her exposition of the alleged facts and her conclusions equal the fiction in the Arabian Nights and are equally as incredible.

We invite the Court's especial attention to the fact that this witness attempted to connect herself up with a certain Wilson Strickland of Duplin County, N. C. and that she was claiming the land in controversy and that she had formerly had a suit at Conroe, Texas wherein she claimed an interest in the land. (Record 504).

It also appeared from the record that the verdict as rendered in the case in which this witness was a party in which verdict it was found:

"That there was not a Wilson Strickland, a son of Absalom and Sara Strickland of Duplin County, N. C." (Record 159).

In other words, the ancestor in title of this witness was MYTH and DID NOT EXIST.

This testimony was excepted to in Exceptions Numbered 1 to 16 inclusive. (Record 109 to 114) on the ground that it was rank hearsay and self serving.

The U. S. Circuit Court of Appeals in passing upon these assignments of error, held, that his evidence was competent, and sustained the judgment of the District Court in overruling the objections.

We contend that the judgment of the U. S. Circuit Court of Appeals in holding that this evidence was competent, was reversible error - and in support of this contention, we call the court's especial attention to the case of:

Byers Vs. Wallace
82nd. Texas - Page 503
28th. S. W. - Page 1059

The decision of the Circuit Court was in conflict with this decision and was in conflict with the established rules of law as related to the asmissibility of evidence.

The Byers case being the law of the forum was binding upon the Circuit Court of Appeals and should have been adhered to.

The testimony of this witness was extremely hurtful and predjudicial and constituted the crux of the attempted counter showing of the defendants.

Justice Sibley in commenting upon this testimony, classifies it as being vivid and seems himself to have had some doubt, but finally held, that though it was hearsay, it was admissible.

In this thought, however, Justice Holmes dissented, and we call the Court's especial attention to the dissenting opinion of Justice Holmes in this case.

CONCLUSION

The case as now requested to be considered for a rehearing, is of signal importance.

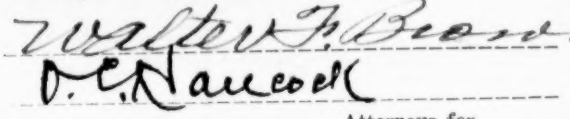
The subject matter involved represents property values running into millions of dollars.

We feel confident that the court, in denying the petition for certiorari evidently overlooked the specific portions of the record to which the Court's attention is now called and overlooked the decisions as herein cited.

We also respectfully contend that the court in reviewing this motion for rehearing will conclude that the decision of the Circuit Court of Appeals as excepted to, was in conflict with local applicable decisions and also in conflict with the decisions of other U. S. Circuit Courts of Appeals, touching the same subject matter and that the decision as excepted to is a departure from the

accepted and usual course of judicial procedings which will incline this court to exercise the Court's power of supervision in santioning the writ of certiorari.

Respectfully submitted,



Attorneys for
Celia Strickland et al. and
Jasper Pool et al.
Petitioners.

ROBERT B. BLACKBURN
1208 First National Bank Bldg.
Atlanta, Georgia

E. L. FOWLER
1103 Citizens & Southern Bank Bldg.
Atlanta, Georgia

B. P. SEAY
Oil & Gas Bldg., Houston, Texas

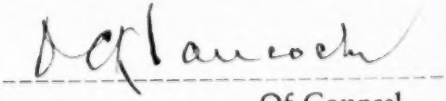
D. B. PHILLIPS
Norcross, Georgia

FLETCHER BROWN
Esperson Bldg., Houston, Texas

Of Counsel for
Celia Strickland et al. and
Jasper Pool, et al.
Petitioners in Certiorari

CERTIFICATE OF COUNSEL

I, O. C. Hancock, of counsel for the above named petitioners, Celia Strickland Et Al. and other parties petitioners, as designated in the foregoing petition for rehearing, do hereby certify that the foregoing petition for rehearing of this cause, is presented in good faith and not for delay.



Of Counsel.